

STATE OF MICHIGAN  
COURT OF APPEALS

---

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

JARVIS LESTER NOLAN,

Defendant-Appellant.

---

UNPUBLISHED

June 12, 2007

No. 268537

Wayne Circuit Court

LC No. 05-009875-01

Before: Davis, P.J., and Hoekstra and Donofrio, JJ.

PER CURIAM.

Defendant appeals as of right from his conviction of possession with intent to deliver less than 50 grams of cocaine, MCL 333.7401(2)(a)(iv), for which he was sentenced as a fourth habitual offender, MCL 769.12, to 2-½ to 25 years in prison. Because the prosecutor presented sufficient evidence to support a finding that defendant intended to deliver cocaine, and, because the trial court did not err when it denied defendant's request for substitute counsel, we affirm. This appeal has been decided without oral argument pursuant to MCR 7.214(E).

Defendant first argues that insufficient evidence was presented from which the jury could have concluded that he intended to deliver the cocaine at issue, and that, at most, the evidence supported a conviction of only possession of a controlled substance. In reviewing a claim of insufficient evidence, this Court reviews the record de novo to determine whether a rational factfinder could have concluded that the prosecution proved all elements of the crime beyond a reasonable doubt. *People v McGhee*, 268 Mich App 600, 622; 709 NW2d 595 (2005); *People v Hawkins*, 245 Mich App 439, 457; 628 NW2d 105 (2001). All of the evidence, direct and circumstantial, is viewed in the light most favorable to the prosecution. *People v Hardiman*, 466 Mich 417, 428; 646 NW2d 158 (2002). Circumstantial evidence and the reasonable inferences that arise from it can constitute sufficient proof of the elements of the crime. *People v Williams*, 268 Mich App 416, 421; 707 NW2d 624 (2005). This Court must afford deference to the factfinder's special opportunity and ability to determine the credibility of witnesses. *People v Wolfe*, 440 Mich 508, 514-515; 489 NW2d 748 (1992), amended 441 Mich 1201 (1992).

The elements of possession with intent to deliver less than 50 grams of a controlled substance are: (1) the recovered substance is the controlled substance it purports to be, (2) the amount of controlled substance possessed by defendant weighs less than 50 grams, (3) the defendant did not have valid authorization to possess the substance, and (4) the defendant knowingly possessed the substance with the intent to deliver. *Wolfe, supra* at 516-517. The

intent to deliver may be inferred from “the quantity of narcotics in a defendant’s possession, from the way in which those narcotics are packaged, and from other circumstances surrounding the arrest.” *Id.*, at 524. Because of the difficulty of proving state of mind, minimal circumstantial evidence is sufficient to find intent. *People v McRunels*, 237 Mich App 168, 181; 603 NW2d 95 (1999); *People v Fetterley*, 229 Mich App 511, 518; 583 NW2d 199 (1998).

Sufficient evidence was presented from which the factfinder could have determined that defendant intended to deliver cocaine. Detroit Police Officers James McDonald and David Sanders observed defendant repeatedly putting his hand into a potato chip bag concealed behind a gas station, removing something from the bag, and walking to the front of the station. The potato chip bag was later seized and was discovered to contain several small pouches of crack cocaine. The officers testified that, based on their experience in narcotics investigations, defendant’s conduct and the manner in which the substance was packaged indicated that he was engaging in narcotics transactions. Based on all of this evidence and the reasonable inferences that arise from it, the jury was entitled to conclude that the prosecution proved beyond a reasonable doubt that defendant possessed the cocaine with the intent to deliver it. See *Wolfe*, *supra* at 515. Although defendant complains on appeal that no narcotics transactions were observed actually taking place, actual delivery of a controlled substance is not required to prove intent to deliver. *Fetterley*, *supra* at 517.

Defendant next claims he is entitled to a new trial because the trial court abused its discretion in denying his request for new counsel. This Court reviews a trial court’s decision regarding substitute counsel for an abuse of discretion. *People v Traylor*, 245 Mich App 460, 462; 628 NW2d 120 (2001). “An indigent defendant is guaranteed the right to counsel; however, he is not entitled to have the attorney of his choice appointed simply by requesting that the attorney originally appointed be replaced.” *Id.*, quoting *People v Mack*, 190 Mich App 7, 14; 475 NW2d 830 (1991). A substitution of appointed counsel will be granted only where there is a showing of good cause and the substitution will not unreasonably disrupt the judicial process. *Traylor*, *supra* at 462. “Good cause exists where a legitimate difference of opinion develops between a defendant and his appointed counsel with regard to a fundamental trial tactic.” *Id.*, quoting *Mack*, *supra* at 14.

We conclude that defendant made no showing of good cause for the substitution of appointed counsel. At his pretrial hearing, defendant argued that he was entitled to new counsel because defense counsel was “ineffective” and was not acting “in [defendant’s] well-being.” These vague and generalized claims do not demonstrate the existence of a difference of opinion concerning a fundamental trial tactic. See *Traylor*, *supra* at 463. Counsel indicated that defendant’s only apparent grievance was that counsel would not file a motion for an evidentiary hearing; however, defendant asserted no basis for such a motion, and counsel indicated that he was unable to ascertain any legitimate basis for seeking an evidentiary hearing. As the trial court noted, counsel was not required to file a frivolous motion. *People v Knapp*, 244 Mich App 361, 386; 624 NW2d 227 (2001). Moreover, counsel’s decision not to file the motion “clearly falls within the categories of professional judgment and trial strategy that are matters entrusted to the attorney” and did not warrant appointment of substitute counsel. *Traylor*, *supra* at 463.

Similarly, on the morning of trial, defendant again expressed generalized dissatisfaction with defense counsel. Counsel explained to the trial court that defendant was insisting that

counsel file a motion to suppress evidence on the ground that the police and the prosecutor had not informed the trial court if a forensic laboratory analysis had been conducted on the controlled substance. Despite his belief that the motion was meritless, counsel did, in fact, move for suppression of the evidence on the basis asserted by defendant. As counsel and the trial court noted, there was no legitimate basis for the motion since a laboratory analysis of the cocaine had been provided and a chemist had testified at defendant's preliminary examination concerning the results of that analysis. Although counsel was not required to file a frivolous motion as urged by defendant, counsel nevertheless complied with defendant's wishes; accordingly, defendant was not in any way prejudiced by counsel's representation. See *Traylor, supra* at 463.

To the extent that defendant argues that counsel was ineffective and did not act in his best interests, the record contains no specific allegations supporting his claim that a legitimate difference of opinion existed concerning fundamental trial tactics, and defendant has cited none on appeal. "Defendant may not leave it to this Court to search for a factual basis to sustain or reject his position." *Traylor, supra* at 464, quoting *People v Norman*, 184 Mich App 255, 260; 457 NW2d 136 (1990). The trial court did not abuse its discretion when it denied defendant's request for substitute counsel.

Affirmed.

/s/ Alton T. Davis  
/s/ Joel P. Hoekstra  
/s/ Pat M. Donofrio